

**Conrock Company and Building Material & Dump Truck Drivers, Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 31-CA-10668**

September 20, 1982

**DECISION AND ORDER**

BY CHAIRMAN VAN DE WATER AND  
MEMBERS JENKINS AND HUNTER

On April 14, 1982, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

Respondent owns and operates rock quarries and cement-mixing facilities. It also delivers rock products and cement. Respondent delivers those materials primarily in its own trucks, but it also contracts with "subhaulers" for a portion of the delivery work. The subhaulers are independent contractors who use their own trucks. Respondent's collective-bargaining agreement with the Union contains an article regarding job protection. That article provides:

It is the intent of the parties to this Agreement to protect the work performed by employees in the bargaining unit.

The Employer recognizes that it is important and desirable to utilize its own equipment and drivers to the greatest extent possible prior to using sub-haulers and/or non-Company trucks.

The Union recognizes that under certain conditions, such as those dictated by customer demands, equipment requirements, daily dispatch determinations, materials to be hauled and similar factors, that sub-haulers and/or non-Company trucks are necessary and have been so utilized throughout the Industry for many years.

The Employer, in accordance with the above, must, however, determine the number, type and location of its working equipment in conformity with its business requirements. The Employer further must be able to determine, in keeping with sound business practices, the

extent to which it will replace equipment which is too costly to operate, obsolete or damaged.

Under these conditions, the Employer agrees that sub-haulers and/or non-Company trucks will not be utilized as a subterfuge to defeat the protection of the bargaining unit work.

In keeping with the above, the Union recognizes that the Employer will utilize such sub-haulers and/or non-Company trucks as required by location and classification only after all the available Company trucks at such locations and in similar classifications have been initially dispatched.

In 1979 and 1980, Respondent removed more trucks from service than it purchased and placed in service. Respondent laid off several drivers in August 1980,<sup>1</sup> and two of them complained about this to Ronald Kennedy, the Union's business agent. Kennedy investigated the matter. He discovered that Respondent was continuing to use a large number of subhaulers, even though it had retired some of its own trucks from service.

Kennedy began to process a grievance on behalf of the laid-off drivers. The grievance alleged that Respondent violated the job protection clause of the collective-bargaining agreement by removing trucks from service and laying off drivers while continuing to use subhaulers. Kennedy requested that the drivers be recalled with backpay and that all of their rights be restored. The initial meeting to discuss the grievance was held on September 17. Arthur Battle, Respondent's manager of industrial relations, maintained that the fourth paragraph of the job protection clause gave Respondent the right to remove the trucks from service. Battle stated that the trucks were retired because they were too costly to operate. Kennedy responded by asking Battle to be more precise. Kennedy also asked Battle for maintenance and repair records to substantiate his claim. Respondent refused to furnish those records. On September 25, at the next step of the grievance procedure, a joint panel of employer and union representatives, Battle continued to maintain that Respondent retired the trucks because they were too costly to operate. The joint panel was unable to resolve the grievance. By letter dated September 26, the Union informed Respondent that it was exercising its right, pursuant to the grievance procedure contained in the collective-bargaining agreement, to take the grievance to arbitration. By letter dated October 9, Kennedy requested Respondent to provide the Union with "[a]

<sup>1</sup> All dates herein are in 1980 unless otherwise indicated.

copy of all mechanical work performed on all material bottom dump trucks starting August 1, 1979, to and including August 1, 1980, plus a company estimate for cost of repair." Respondent refused to provide the Union with this information. In a letter dated November 4, Battle stated that "the information requested is irrelevant to the issues in the subject grievance and unnecessary for proving the labor agreement or fairly representing bargaining with [sic] employees." Battle reiterated Respondent's position that it had the right to retire trucks that were too costly to operate, and also alluded to Respondent's policy of retiring trucks that reach a certain age regardless of maintenance or repair cost. Soon afterwards, the Union filed an unfair labor practice charge alleging that Respondent was violating Section 8(a)(5) and (1) of the Act by refusing to furnish relevant and necessary information.

The Administrative Law Judge dismissed the complaint. He found that the information sought by the Union was not relevant to the grievance and thus Respondent was not obligated to provide it. He reasoned that the information was not relevant because Respondent took the position at the hearing that it would not contend at an arbitration proceeding that the trucks were retired from service because they were too costly to operate. Instead, Respondent claimed that the trucks were retired in accordance with its policy regarding obsolete equipment. Pursuant to that policy, Respondent retires trucks after they have been in service for 10 years, regardless of maintenance costs.

We do not agree with the Administrative Law Judge. It is well settled that an employer has an obligation, as part of its duty to bargain in good faith, to provide information needed by a union to enforce and administer a collective-bargaining agreement.<sup>2</sup> An employer must furnish information that is of even probable or potential relevance to the union's duties.<sup>3</sup> The refusal by an employer to provide relevant information requested by the union is a violation of Section 8(a)(5) and (1) of the Act.

In this case, the information sought by the Union is clearly relevant to the grievance it had filed. The Union wanted records of repair work performed on Respondent's trucks, and the estimated costs of repair. The information is relevant because Respondent's manager of industrial relations, Arthur Battle, maintained at the initial grievance meeting and again before the joint panel that the trucks were retired from service because they were "too

costly to operate." The job protection clause of the collective-bargaining agreement provides that Respondent may retire trucks for this reason. Information regarding repair costs is obviously relevant for evaluating the propriety of Respondent's decision. The information also appears to be relevant to similar contractual claims that the Union may wish to pursue or at least to consider.<sup>4</sup>

Contrary to the Administrative Law Judge's finding, relevant information cannot be rendered irrelevant by an employer's promise not to raise a particular defense at an arbitration proceeding. That notion is inconsistent with a union's right to evaluate relevant information while deciding whether to pursue the grievance at all.<sup>5</sup> Also, a union has the right and the responsibility to frame the issues and advance whatever contentions it believes may lead to the successful resolution of a grievance. It follows that a defending employer may not limit the theories that a union wishes to pursue by denying information to the union, as Respondent has attempted to do here.<sup>6</sup> In addition, we are not willing to speculate regarding what defense or defenses an employer will raise in an arbitration proceeding. It would also be impossible for the Board to police an arbitration proceeding to assure that certain defenses are not raised, directly or obliquely, as the employer promised. We are not questioning the integrity or good faith of Respondent and its counsel. Rather, we simply acknowledge that, due to any number of exigencies or developments, the operating costs of Respondent's trucks could be at issue in an arbitration proceeding, despite Respondent's promise not to raise it as a defense.

Accordingly, we reverse the Administrative Law Judge's Decision and find that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with the information it sought.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent,

<sup>4</sup> The job protection clause also provides, for example, that the employer will use its own equipment and drivers "to the greatest extent possible" before it uses subhaulers, that the employer will not use subhaulers as a "subterfuge" to undermine the protection of bargaining unit work, and that although the employer may replace equipment that is too costly to operate or is obsolete, it may do so only in accordance "with sound business practices." We have examined the collective-bargaining agreement only to determine whether the information sought by the Union is potentially relevant. We are not expressing any opinion about the merits of any contractual claim. *N.L.R.B. v. Acme Industrial Co.*, *supra* at 437-438.

<sup>5</sup> *N.L.R.B. v. Acme Industrial Co.*, *supra* at 438-439.

<sup>6</sup> See *Transport of New Jersey*, 233 NLRB 694 (1977).

<sup>2</sup> *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432 (1967).

<sup>3</sup> *Leland Stanford Junior University*, 262 NLRB 136 (1982); *Los Angeles Chapter, Sheet Metal and Air Conditioning Contractors National Association*, 246 NLRB 886 (1979).

Conrock Company, Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Building Material & Dump Truck Drivers, Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, by refusing to furnish the said labor organization with records pertaining to repair work and estimated costs of repair of bottom dump trucks, which records are needed to enable it to process a grievance on behalf of employees in the bargaining unit. The appropriate unit is:

All employees of employers who have voluntarily signified their consent to be part of the Rock Products and Ready Mixed Concrete Employers of Southern California multi-employer bargaining unit and to be bound to the 1979-1982 collective bargaining agreement between that multi-employer bargaining unit and Locals 420, 692, 495, 88, 982, 235 and 871 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, employed in the classifications set forth in Article IV of the collective bargaining agreement, excluding all other employees properly covered in other bargaining units, office clerical employees, technical and professional employees, guards, watchmen, and supervisors as defined in the Act as amended.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Building Material & Dump Truck Drivers, Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, by furnishing to the said labor organization the records pertaining to repair work and estimated costs of repair of bottom dump trucks, which records are needed to enable it to process a grievance on behalf of employees in the above-described bargaining unit.

(b) Post at its facility in Los Angeles, California, copies of the attached notice marked "Appendix."<sup>7</sup>

<sup>7</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Building Material & Dump Truck Drivers, Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of the employees in the appropriate unit set forth below, by refusing to furnish the said labor organization with records pertaining to repair work and estimated costs of repair of bottom dump trucks, which records are needed to enable it to process a grievance on behalf of employees in the bargaining unit. The appropriate unit is:

All employees of employers who have voluntarily signified their consent to be part of the Rock Products and Ready Mixed Concrete Employers of Southern California multi-employer bargaining unit and to be bound to the 1979-1982 collective bargaining agreement between that multi-employer bargaining unit and Locals 420, 692, 495, 88, 982, 235 and 871 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, employed in the classifications set forth in Article IV of the collective bargaining agreement, excluding all other employees properly covered in other bargaining units, office clerical employees, technical and professional employees, guards, watchmen, and supervisors as defined in the Act as amended.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employ-

ees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain collectively with Building Material & Dump Truck Drivers, Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, by furnishing to the said labor organization the records pertaining to repair work and estimated costs of repair of bottom dump trucks, which records are needed to enable it to process a grievance on behalf of employees in the bargaining unit.

#### CONROCK COMPANY

#### DECISION

#### STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On August 20 and November 5, 1981, I conducted a hearing at Los Angeles, California, to hear issues raised by a complaint issued on January 15, 1981, based on a charge filed by Local 420 on November 28, 1980.<sup>1</sup> The complaint alleges that Conrock Company (herein called Conrock) violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, by refusing to furnish Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Local 420) with truck maintenance records and repair estimates over the period August 1, 1979, through August 1, 1980, to aid Local 420's investigation and processing of a grievance to arbitration over Conrock's layoff of drivers represented by Local 420 and covered by an agreement between an employer association with which Conrock was affiliated and several locals of the International Brotherhood of Teamsters (IBT), including Local 420. Conrock conceded it refused to furnish the requested documents, but contends its refusal was not violative of the Act because those documents were not necessary, relevant, or material to any issue raised by Local 420's grievance. The major issue is whether the Company's contention is supported by the evidence.

The parties appeared by counsel at the hearing and were afforded full opportunity to adduce evidence, to examine and cross-examine witnesses, to argue, and to file briefs. The General Counsel argued orally and Conrock submitted a brief.

Based upon my review of the entire record, observation of the witnesses, perusal of the brief and argument, plus research, I enter the following:

#### FINDINGS OF FACT

##### I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find at all pertinent times that Conrock was an employer engaged in commerce in a business affecting commerce and

that Local 420 was a labor organization within the meaning of Section 2 of the Act.

#### II. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. Facts

Conrock is one of the largest, if not the largest, owner and operator of rock quarries, cement-mixing, and delivery facilities and seller and transporter of rock products and ready-mix cement in the United States, and certainly in southern California. As part of its business, it owns and operates a large fleet of trucks, including mixer trucks, bottom dump trucks,<sup>2</sup> and tractor-trailers. For many years Conrock has contracted with subhaulers for transportation of a portion of its materials in their vehicles, in addition to the use of its own fleet.

At all pertinent times, Conrock has been affiliated with an employer association known as the Rock Products and Ready Mixed Concrete Employers (the Association) and the rates of pay, wages, hours and working conditions of its drivers and related employees have been governed by agreements between the Association and a number of IBT Locals in southern California<sup>3</sup> with geographical jurisdiction over the southern California portion of Conrock's operations. The agreement involved here was executed in 1979 for a term extending from August 1, 1979, through August 1, 1982.

That agreement, *inter alia*, provided (art. XIX, "Job Protection"):

It is the intent of the parties to this Agreement to protect the work performed by employees in the bargaining unit.

The Employer recognizes that it is important and desirable to utilize its own equipment and drivers to the greatest extent possible prior to using sub-haulers and/or non-Company trucks.

The Union recognizes that under certain conditions, such as those dictated by customer demands, equipment requirements, daily dispatch determinations, materials to be hauled and similar factors, that sub-haulers and/or non-Company trucks are necessary and have been so utilized throughout the Industry for many years.

The Employer, in accordance with the above, must, however, determine the number, type and location of its working equipment in conformity with its business requirements. The Employer further must be able to determine, in keeping with sound business practices, the extent to which it will replace equipment which is too costly to operate, obsolete or damaged.

Under these conditions, the Employer agrees that sub-haulers and/or non-Company trucks will not be utilized as a subterfuge to defeat the protection of the bargaining unit work.

In keeping with the above, the Union recognizes that the Employer will utilize such sub-haulers and/or non-Company trucks as required by location

<sup>1</sup> Read 1980 after all further date references omitting the year.

<sup>2</sup> Consisting of a tractor, a semi-trailer, and a haul trailer.

<sup>3</sup> IBT Locals 88, 235, 420, 495, 692, and 871.

and classification only after all the available Company trucks at such locations and in similar classifications have been initially dispatched.

On January 1, 1979, 72 bottom dump trucks and 59 tractor-trailers were included in Conrock's southern California fleet; during 1979, Conrock retired 13 bottom dump trucks and 16 tractor-trailers and purchased and placed in service 7 new bottom dump trucks and 5 new tractor-trailers, for a net reduction of 17 (6 bottom dump trucks and 11 tractor-trailers). The January 1, 1980, bottom dump truck and tractor-trailer fleet of 66 bottom dump trucks and 48 tractor-trailers was further reduced during 1980 by another 21 units (retiring 17 bottom dump trucks and 14 tractor-trailers and purchasing and placing into service 5 new bottom dump trucks and 5 tractor-trailers), for a bottom dump truck and tractor-trailer fleet on January 1, 1981, of 43 bottom dump trucks and 40 tractor-trailers, a total fleet reduction over the 2-year period of 29 bottom dump trucks and 19 tractor-trailers.

None of the IBT locals signatory to the 1979-82 agreement filed grievances over the 1979 reductions or the first 1980 reduction (in May);<sup>4</sup> however, when a number of trucks were retired in July and August, drivers represented by Local 420 were laid off and they complained to Local 420 Business Agent Ronald Kennedy, who was assigned by Local 420 to service Conrock employees covered by the Association's agreement. In the course of Kennedy's investigation of the layoffs, one of the laid-off drivers and one of Local 420's stewards (Charles Vaughn) informed Kennedy that Conrock's dispatchers were assigning to subhaulers hauling work performed by Conrock drivers with Conrock equipment prior to the layoff of the former and the retirement of the latter.

Kennedy promptly (on September 5) filed a contract grievance alleging that Conrock violated article XIX by taking units out of service, laying off drivers, and contracting out the work they previously performed to subhaulers for performance by their employees with their equipment. Kennedy demanded that the laid-off drivers be recalled with backpay and all rights restored.

The grievance, along with other grievances, was discussed by representatives of Conrock and Local 420<sup>5</sup> on September 17, in accordance with the grievance procedure established by the agreement. The discussion of the grievance commenced with a demand from Kennedy for an explanation why Conrock parked its trucks in July and August and laid off drivers. Battle responded with a reference to the fourth paragraph of article XIX, the statement under that paragraph Conrock had the right to

take whatever number of trucks it deemed necessary out of service, and that it took the trucks in question out of service because they were too costly to operate. Kennedy asked what Battle meant by saying the trucks were too costly to operate, demanding that Conrock produce maintenance and repair records to substantiate its claim. Vincent directed Kennedy's attention to the language of article XI, section 1(a), of the agreement stating:

On request of the Union Representative, the Employer shall produce the payroll records that bear upon the grievance, for examination by the Union Representative.

He took the position that payroll records were the only documents Conrock was under any obligation to produce. The meeting ended on that note.<sup>6</sup>

The grievance was taken to the next step of the contract grievance procedure (step 2) on September 25 for consideration by a joint panel consisting of an equal number of panelists designated by the Association and the six IBT locals which were signatory to the agreement. Grievance disputes between a number of the Association's affiliates and various of the six IBT locals representing their employees were reviewed, including the Local 420 grievance. Kennedy presented Local 420's position and Battle presented Conrock's position before the panel. Kennedy stated that Conrock parked a number of its trucks, laid off drivers, and assigned the work performed by the parked trucks and Conrock drivers to subhaulers for performance by the subhaulers' vehicles and drivers, thereby violating the fifth paragraph of article XIX of the agreement. While Battle conceded that Conrock parked a number of its trucks and laid off drivers, he contended under the fourth paragraph of article XIX that Conrock was not required to maintain its fleet at a constant level and it was within its complete discretion to take trucks out of service and lay off drivers if, *inter alia*, they were "too costly to operate." Asked by Kennedy if he meant Conrock was free to take trucks out of service, lay off drivers, and contract out the work performed with those trucks to subhaulers for performance with the subhaulers' vehicles and drivers, because it was less costly to have the work in question performed by subhaulers rather than by the trucks taken out of service and Conrock's drivers, Battle replied affirmatively.<sup>7</sup> The

<sup>4</sup> No drivers were laid off in May when five units were removed from service; the record does not show if any drivers were laid off when the 1979 reductions occurred.

<sup>5</sup> Arthur Battle, Conrock's manager of industrial relations; Grant Vincent, Conrock's overall operations manager, transportation; and Henry Lang, a Conrock transportation manager, represented Conrock during the ensuing discussion. Local 420 was represented by Oliver Traweck, its secretary-treasurer; Horace Miranda, a business agent, and Kennedy. I find at all pertinent times that Battle, Vincent, and Lang were supervisors and agents of Conrock acting on its behalf and that Traweck, Miranda, and Kennedy were agents of Local 420 acting on its behalf.

<sup>6</sup> I credit Kennedy's testimony to the above and discredit any contrary testimony. Battle and Vincent corroborated Kennedy's testimony that he demanded records concerning the cost of operating the marked trucks and Vincent refused to supply that information on the ground that the agreement did not require it; there would not be a reason for that exchange if Battle had not previously asserted the trucks were parked because they were too costly to operate; in addition, Kennedy impressed me as an honest, forthright witness. Also, it seems incredible Kennedy would persist (as he did) in demanding such records if Conrock's representatives had not previously stated that the parked trucks were "too costly to operate."

<sup>7</sup> Charles Vaughn, the Local 420 steward who informed Kennedy that work performed by Conrock trucks and drivers had been assigned to subhaulers on the parking of those trucks and layoff of drivers, accompanied Kennedy to the September 25 panel consideration of the Kennedy grievance and testified that Battle so responded to Kennedy's question. Battle did not refute Vaughn's testimony to that effect, pleading an absence of recollection as to whether or not he so responded to Kennedy's questions. I credit Vaughn's testimony.

panel went into executive session and deadlocked over the merits of the grievance.

On September 26, Local 420 notified Conrock that it was exercising its right under step 3 of the contract grievance/arbitration procedure to take the grievance to arbitration.

On October 9, Kennedy addressed a letter to Conrock requesting Conrock to furnish Local 420 with:

A copy of all mechanical work performed on all material bottom dump trucks starting August 1, 1979, to and including August 1, 1980, plus a company estimate for cost of repair.

On November 4, Conrock responded by stating that after careful consideration of the request and securing advice of counsel:

We respectfully decline your request. We believe that the information requested is irrelevant to the issues in the subject grievance and unnecessary

\* \* \* \* \*

The union well knows that our well established policy of removing trucks of an attained age in service from our fleet at regular intervals is not based on the relative cost of maintaining and repairing any one or more trucks at any point in time, but on our best judgment as to the most cost-effective method of maintaining an economical and effective fleet of trucks over the longpull.

The union also well knows that we have a well established policy of purchasing new trucks in an orderly fashion. The union also well knows that our actions to date in this regard are entirely consistent with our established position.

We have the right to determine the number, type and location of our working equipment in conformity with our business requirements. We have the right to determine, in keeping with sound business practices, which of our equipment is too costly to operate, obsolete or damaged. We have the right to determine also, in keeping with sound business practices, the extent to which we will remove from our fleet any such equipment as to which we have made such a determination. We have the right to determine, in keeping with sound business practices, the extent to which we will replace any such equipment.

The orderly removal from our fleet of all trucks that reach a certain age in service is a sound business practice. The orderly purchase of new trucks at a programmed rate is a sound business practice.<sup>8</sup>

<sup>8</sup> In keeping with this statement, counsel for Conrock demonstrated by valid evidence that Conrock retired 12 bottom dump trucks from its fleet in July and August that had been in service for approximately 10 years and that a number of drivers were laid off as a consequence and that such retirement had been Conrock and industry practice for many years. Counsel also represented on the record that Conrock would not, at the pending arbitration, make any contention that the vehicles in question were taken out of service because of their relative costs of repair and maintenance. (Battle and Vincent also testified, without contradiction,

On November 28, Local 420 filed the charge which led to this proceeding.

### B. Analysis and Conclusions

It has been settled law since the issuance of the *Acme Industrial* decision<sup>9</sup> that either party to a collective-bargaining agreement is entitled, upon request therefor addressed to the other party, to information which will enable the requesting party to evaluate the merits of a grievance it is investigating or to secure information for use in processing that grievance on its merits, so long as the requested information is necessary, relevant, and material to the subject matter of the grievance.<sup>10</sup>

This grievance dispute arose over what effect shall be given to various provisions of article XIX of the 1979-1982 agreement between the Association and the six southern California IBT locals, including Local 420.

It was and is Local 420's theory of the dispute that, by article XIX, the parties intended to preserve the portion of the hauling work performed by the Association's affiliates with their own drivers and equipment at the levels which existed at the time the agreement was executed for the duration of the agreement, recognizing that those affiliates were entitled to continue contracting out to subhaulers over the contract period the same proportion of hauling work they had previously contracted out; that since the execution of the agreement Conrock has diminished the portion of the hauling work done by its vehicles and drivers and increased the portion of the hauling work done by subhaulers, thereby violating article XIX.

Since Conrock admittedly over the first 2 years of the agreement substantially reduced the number of bottom dump trucks and tractor-trailers it used in its hauling operations by retiring vehicles and laying off drivers and not replacing the retired vehicles and recalling drivers in the number retired and laid off, the key information that Local 420 needs to evaluate and present its case for arbitration is evidence concerning the volume of Conrock's hauling work over the 2-year period and the ratios maintained over that period between the portion performed by its vehicles and drivers and the portion performed by subhaulers.<sup>11</sup>

they were and are unaware of the cost of such repair and maintenance of the vehicles in question or the balance of the bottom dump trucks in the fleet, and such costs played no part in Conrock's decision to take the vehicles in question out of service.) The Battle-Vincent testimony is credited and I accept counsel's representation. Counsel for Conrock also offered to stipulate to the same effect as his representation; the proposed stipulation was rejected by counsel for the Charging Party and counsel for the General Counsel.

<sup>9</sup> *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432 (1967).

<sup>10</sup> *N.L.R.B. v. Acme Industrial Co.*, *supra*; *Standard Oil Company of California v. N.L.R.B.*, 399 F.2d 639 (9th Cir. 1968); *N.L.R.B. v. Ramona's Mexican Food Products*, 531 F.2d 390 (9th Cir. 1975); *San Diego Newspaper Guild v. N.L.R.B.*, 548 F.2d 863 (9th Cir. 1977); *N.L.R.B. v. Associated General Contractors of California*, 633 F.2d 766 (9th Cir. 1980); *Columbus Products Company, etc.*, 259 NLRB 220 (1981).

<sup>11</sup> The General Counsel sought that information by subpoena; I sustained Conrock's motion to quash that subpoena on the ground, while that information was essential for purposes of the arbitration, it was irrelevant to the issue before me; i.e., whether the maintenance records of Conrock's bottom dump trucks over a 1-year period was necessary, relevant, and material to the issues before the arbitrator.

With the grievance dispute in this posture, why then did Kennedy seek the maintenance records of Conrock's bottom dump trucks for a 1-year period, 1979-80? The reason stems from the ambiguity of Battle's response to Kennedy's demand for the reasons Conrock retired vehicles and laid off drivers in July and August. When Kennedy on September 17 asked why the vehicles were retired and drivers laid off, Battle responded the vehicles were retired because they were too costly to operate. Kennedy interpreted that response as a possible assertion that the retired trucks generated higher maintenance costs than the average costs of trucks of the same type, and demanded that Conrock produce records relating to that issue. Instead of telling Kennedy that Conrock was not claiming that the retired trucks were more costly to maintain and operate than the balance of the fleet, Vincent flatly refused to comply with the request on the ground that the only records Conrock was obligated to supply to Local 420 under the agreement were payroll records, and the records he requested were not in that category.

Battle did not lessen the ambiguity of Conrock's position when, at the September 24 panel discussion, he again asserted that Conrock had a right to take out of service trucks which in Conrock's judgment were too costly to operate.

In fact, not until the hearing before me did it become clear that Conrock never ascertained or considered the maintenance costs of the trucks it retired in July and August *vis-a-vis* other trucks of the same type, and that

Conrock does not, and will not, assert such costs as a reason for taking the vehicles in question out of service.

Thus, this entire proceeding arose due to a misapprehension by the Union of the Employer's position and the failure of the Employer to clarify its position during the employer-union discussions of the grievance.

What is apparent, however, is that, based on the current status of the dispute, the requested information is unnecessary, irrelevant, and immaterial to the issues before the arbitrator.

I therefore recommend that the complaint be dismissed in its entirety.

#### CONCLUSIONS OF LAW

1. At all pertinent times Conrock and the Association were employers engaged in commerce in a business affecting commerce and IBT Locals 88, 235, 420, 495, 692, and 871 were labor organizations within the meaning of Section 2 of the Act.

2. At all pertinent times Local 420 has been the duly designated collective-bargaining representative of an appropriate unit of Conrock's employees, including drivers, and the rates of pay, wages, hours, and working conditions of the unit employees have been established by an agreement between the Association and the six IBT locals named above.

3. Conrock did not violate Section 8(a)(1) and (5) of the Act by refusing to supply Local 420 with the maintenance records Local 420 requested on October 9.

[Recommended Order for dismissal omitted from publication.]